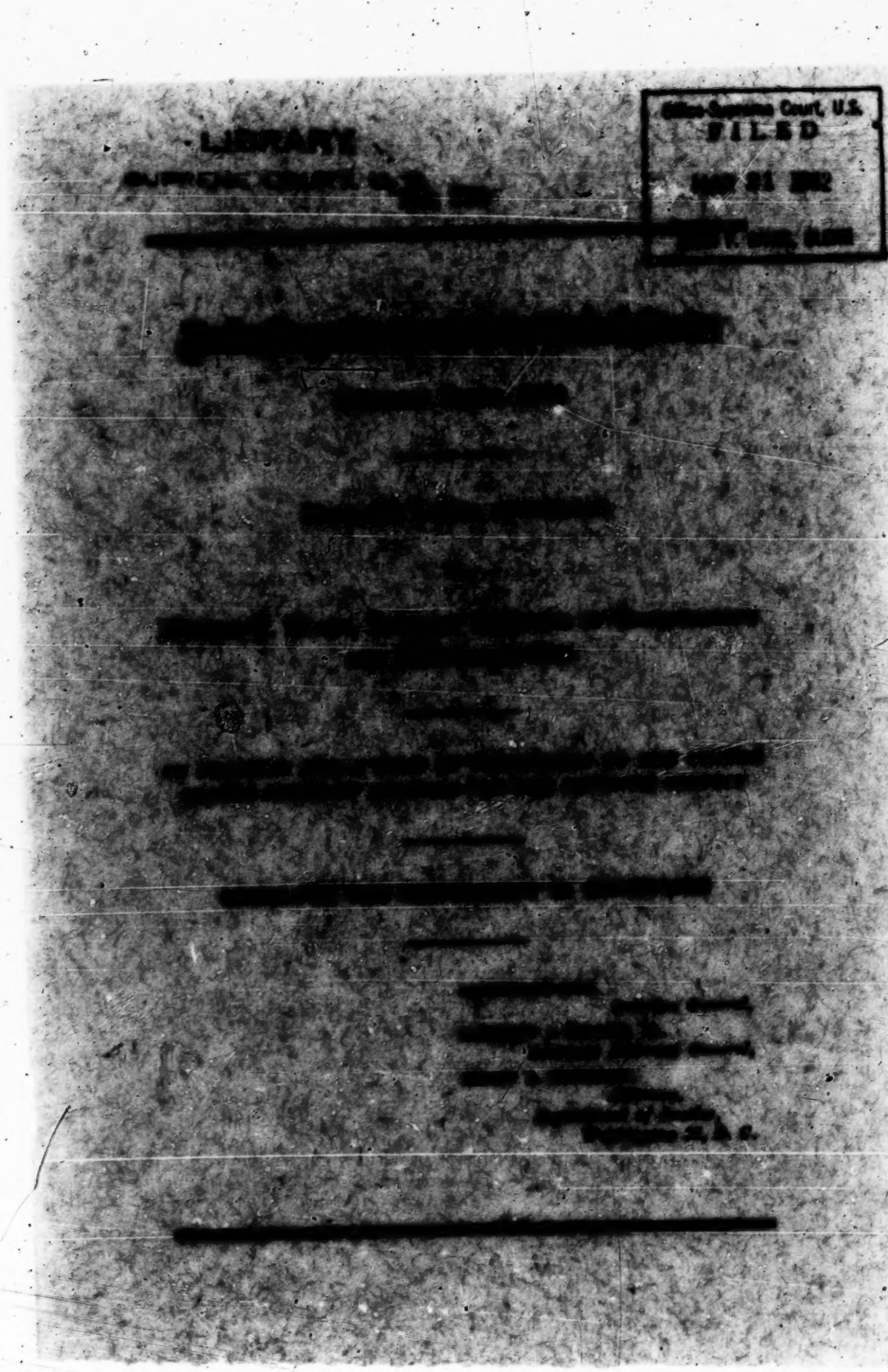
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INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes, regulations and rule involved	3
Statement	3
1. The denaturalization proceeding	3
2. The deportation proceeding	4
3. The order of deportation and opinion of the Special Inquiry Officer	10
4. The appeal to the Board of Immigration Appeals and the judicial review proceedings	11
Argument	12
Conclusion	20
Appendix	21

CITATIONS

Cases:

Anselmo v. Hardin, 253 F. 2d 165	14
Lehmann v. Carson, 353 U.S. 685	12-13
Mulcahey v. Catalabotte, 353 U.S. 692	12-13
Pilliss v. Smith, 46 F. 2d 769	17
Schneiderman v. United States, 320 U.S. 118	18
United States ex rel. Allessio v. Day, 42 F. 2d 217	17
United States v. De Lucia, 163 F. Supp. 36	3, 4
United States v. De Lucia, 256 F. 2d 487, certiorari denied, 358 U.S. 836	3, 18
United States ex rel. Sollano v. Deale, 5 F. Supp. 561, affirmed, 68 F. 2d 1019	17
United States v. Stromberg, 227 F. 2d 903	19
United States ex rel. Zacharias v. Shaughnessy, 221 F. 2d 578	13

Statutes, Regulations and Rule:

Administrative Procedure Act, Sec. 10 (5 U.S.C. 1009)	12
Immigration Act of February 5, 1917, Sec. 3, 39 Stat. 875 (8 U.S.C. [1926 ed.] 136)	3, 5, 11, 23

Statutes, Regulations and Rule—Continued

	Page
Immigration and Nationality Act of June 27, 1952, 66 Stat. 163:	
Sec. 241 (8 U.S.C. 1251)	3, 4, 11, 13, 21
Sec. 291 (8 U.S.C. 1361)	15
Sec. 340 (8 U.S.C. 1451)	3
Sec. 405 (8 U.S.C. 1101, Note)	3, 12, 21
Passport Act of May 22, 1918, 40 Stat. 559:	
Sec. 1	3, 22
Sec. 3	3, 23
28 U.S.C. 2201	5, 12
Executive Order No. 2932 of August 8, 1918	3, 11, 23
Joint Order of the Department of State and the Department of Labor issued July 26, 1917	3, 24
Rule 60 (b), F.R. Civ. P.	3, 18, 25
Miscellaneous:	
Davis, *Administrative Law* (1951), §§ 150 *et seq.*	17

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 733

PAUL DE LUCIA, PETITIONER

v.

WILBUR T. FLAGG, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 845-851) is reported at 297 F. 2d 58. The opinion of the district court (A.[1] 246-263; Pet. App. 827-844) is unreported.

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[1] "A." refers to the Appendix to petitioner's brief in the court of appeals, consisting of portions of the record. It is on file with the Clerk of this Court.

JURISDICTION

The judgment of the court of appeals was entered on December 4, 1961, and a petition for rehearing was denied on January 11, 1962. The petition for a writ of certiorari was filed on February 19, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner had a "status of nondeportability" at the time of the passage of the Immigration and Nationality Act of 1952, which was preserved by the Act's saving clause.

2. Whether the judgment admitting petitioner to citizenship, which was revoked for fraud in the procurement, rendered the lawfulness of petitioner's entry into the country *res judicata*.

3. Whether the hearing officer at the deportation proceeding improperly placed upon petitioner the burden of proving that his entry was lawful.

4. Whether the hearing officer relied upon an adverse inference from petitioner's claim of the privilege against self-incrimination.

5. Whether it was proper for the hearing officer to examine provisions of the Italian Penal Code, referred to in a record of conviction which was in evidence, in order to verify that the crime was one involving moral turpitude.

6. Whether petitioner's motion for leave to file a petition under Rule 60(b), F.R. Civ. P., for relief from the judgment of denaturalization was properly denied.

STATUTES, REGULATIONS AND RULE INVOLVED

Relevant portions of Sections 241(a)(1) & (d) and 405 of the Immigration and Nationality Act of 1952, 66 Stat. 204, 208, 280, 8 U.S.C. 1251(a)(1) & (d) and 1101, Note; Sections 1 and 3 of the Passport Act of 1918, 40 Stat. 559; Section 3 of the Immigration Act of 1917, 39 Stat. 875; Sections 5 and 31 of Executive Order No. 2932 of August 8, 1918; the Joint Order of the Departments of State and Labor issued July 26, 1917; and Rule 60(b) of the Federal Rules of Civil Procedure, are set forth in the Appendix, *infra*, pp. 21-26.

STATEMENT

1. *The denaturalization proceeding.*—Petitioner, a native of Italy, entered this country on August 12, 1920, and was naturalized in the United States District Court for the Northern District of Illinois on September 27, 1928 (A. 108, 216-217, 219). On October 10, 1956, pursuant to Section 340(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1451(a), denaturalization proceedings were commenced in the same court, the complaint charging that the order and certificate of naturalization had been procured through willful misrepresentations and the concealment of material facts (A. 133-137, 246-248). Following a trial before the court (La Buy, D.J.), a decree of denaturalization was entered on June 11, 1957 (A. 244-245), *United States* v. *De Lucia*, 163 F. Supp. 36 (Pet. App. 801-812). On June 18, 1958, the judgment of denaturalization was affirmed. *United States* v. *De Lucia*, 256 F. 2d 487 (C.A. 7), certiorari denied, 358 U.S. 836 (Pet. App. 813-822).

The evidence at the denaturalization trial, which was reviewed in detail in Judge La Buy's opinion (163 F. Supp. 36; Pet. App. 801-812), showed, in brief, that petitioner's true original name was Felice De Lucia (163 F. Supp. at 38-40; Pet. App. 805-809); that he was convicted of voluntary homicide in Naples, Italy, on May 18, 1917 (A. 224-225); that he "falsely assumed the name of Paul Maglio to enter this country" (163 F. Supp. at 38; Pet. App. 805); that he again falsely stated his name to be Paul Maglio in applying for citizenship and thereby "committed perjury * * *" and "* * * a fraud on the court" (163 F. Supp. at 38; Pet. App. 805; A. 205, 207, 209, 212, 214)[*]; and that he further falsely represented in the naturalization proceedings that he had never been arrested (A. 146, 211, 224-225, 227).

2. *The deportation proceeding.* On December 10, 1958 (A. 107), petitioner was served with an order to show cause (A. 84-85) why he should not be deported pursuant to Section 241(a)(4) of the Immigration and Nationality Act of 1952 (Appendix, *infra*, p. 2a), as an alien who, at the time of entry, was within one or more of the classes of aliens excludable by the law existing at the time of entry. It was charged that at the

[*] At petitioner's request (A. 209), the court of naturalization, on the occasion of his admission to citizenship, changed his name from Paul Maglio, which he had represented his true name to be, to Paul De Lucia, the name by which he has since been known (A. 219). The reason for the court's action was that petitioner had represented to the court in his naturalization papers that he "got married" under the name Paul De Lucia on his entry in 1927, that he [illegible] that name, and that he desired to adopt it legally (A. 207, 208, 209).

time of his entry in August 1920 he was excludable on each of two grounds: (1) failure to have in his possession a passport or other travel document showing his identity, as required by the Passport Act of May 22, 1918, and Executive Order No. 2932 of August 8, 1918, issued pursuant thereto (Appendix, *infra*, pp. 22-23, 23-24), and (2) prior conviction of a crime involving moral turpitude, voluntary homicide, by which he was excludable under Section 3 of the Immigration Act of February 5, 1917 (Appendix, *infra*, p. 23).

On January 6, 1959, a hearing was held on the order to show cause before a Special Inquiry Officer (A. 85-106). By stipulation of counsel, the transcript of the testimony and the exhibits received in the denaturalization proceedings, with certain immaterial exceptions, were made part of the record (A. 88, 92, 97-99).[1] In addition, certain evidence which was not adduced in the denaturalization proceedings was received in the deportation proceeding (A. 88-92). Petitioner, through his counsel, admitted that he was an alien and a native of Italy and that he had last entered the United States on August 12, 1920 (A. 86-87). He declined to answer further questions put to him by the examining officer concerning the circumstances of his entry, claiming the privilege against self-incrimination (A. 99-100).

[1] Petitioner was asked under what name he entered the United States at the time he was at first alleged to have entered the United States under the name of Paolo Miglio and whether he denied that his true name was Lelio D. Luca

The evidence presented by the government, which is reviewed in detail in the opinion of the Special Inquiry Officer (A. 110-123), may be summarized as follows:

(a) *The evidence that petitioner, whose true name was Felice De Lucia, entered the United States under a false passport identifying him as Paul Maglio.*—In an alien registration form executed by petitioner on November 20, 1958 (Exhibit A-53), petitioner stated that he entered the United States under the name of Paul Maglio and that he last arrived in the United States at the port of New York in August 1920 on the S.S. Ryndam (A. 110). In his petition for naturalization, dated April 10, 1928, and in the preliminary form for petition for naturalization, dated February 21, 1928, petitioner stated that his name was Paul Maglio; that he arrived at the port of New York on August 10, 1920, on the Ryndam; that he was born in Apricena, Italy, on July 10, 1898; and that his mother's name was Nunzia Maria Torelli (A. 110, 207, 212). In the preliminary form for petition for naturalization, petitioner stated that he had used, and was then using, the name Paul De Lucia "because I got married on that name," and that he desired to have his name changed to Paul De Lucia (A. 110, 207, 209). When a certificate of naturalization was issued to petitioner on September 27, 1928, it was issued in the name of Paul De Lucia and the certificate contained a notation that, by order of the court, his name was changed to Paul De Lucia from Paul Maglio (A. 110, 216-217, 219).

A witness, Paul Maglio (not the petitioner), testified that he was born in Apricena, Italy, on July 10, 1898;

that his mother's name was Nunzia Maria Clotilde Torelli; that he entered the United States on August 3, 1920; that he resided in Apricena from the time of his birth until he came to the United States, except for a period of approximately three years, during which he served in the Italian army; that he had been employed in the City Hall in Apricena, taking care of the birth and death records; that Apricena had a population of about 6,000 persons when he left there; that no one named Paul Maglio lived there except himself; and that no family named Maglio lived there except his own (A. 140-142, 147-148). He further testified that petitioner was not related to him and that he had never seen him before (A. 142, 148).[4] A cousin of the witness, Alfonso Torelli, who lived in Apricena for twenty years before emigrating to the United States in 1920, corroborated various details of the witness's testimony, including his testimony that "[o]nly one Maglio family and only one Paul Maglio" lived in Apricena (A. 142, 149). Torelli, like Maglio, had never seen petitioner before (A. 142-143, 149).

It was established through Italian birth records that a son, Felice, was born to Antonio De Lucia and his

[4] The witness identified Exhibit 11K as the passport on which he had come to the United States. He testified that he received it in February 1920, that it was in his possession for about two months, that he gave it to a person who had a travel agency in Naples and who took care of all the people that came to the United States, including the making of arrangements for securing the "American Consul's visa," and that this person returned his passport to him the day before he departed from Italy for the United States (A. 148). The witness arrived in the United States at the port of New York nine days before petitioning (A. 141).

wife, Maria Annunziata, in Naples, Italy, on November 14, 1897; and that four daughters—Emilia Beatrice, Anna Clementina, Clementina Eleonora, and Luisa Maria—were born to the same couple in Ottaviano, Italy, between 1898 and 1907 (A. 117). In various documents signed by petitioner between 1927 and 1941, including a bank signature card and applications for insurance, he stated that he was born in Naples on November 14, 1897 (A. 114-115). In several instances, he gave July 1898 as the month of his birth and Naples as his place of birth (*ibid.*). The record of his marriage in Chicago in 1927 gave Naples as his place of birth and his parents' names as Anthony De Lucia and Mary Annunziata (A. 113-114, 119). In 1947, petitioner told an F.B.I. agent that he had four sisters living in Italy, named Anna, Louise, Emily, and Clementine, or Clementina (A. 118, 150).

Government Exhibit 7, the passenger manifest of the S.S. Ryndam on its arrival at the port of New York on August 12, 1920, listed as one of the arriving alien passengers a person named Paolo Maglio, aged 22, whose father was Enrico Maglio, and whose place of birth was Apricena, Italy (A. 268-269). It was stipulated at the deportation hearing that if one Edward Ferro, a retired immigrant inspector, were called as a witness, he would testify that he was familiar with the regular practice and procedure of inspecting aliens at New York on or about August 12, 1920; that there was a regular and standard procedure for checking the manifest record of arriving aliens against the aliens; that it was a part of the procedure, as reflected in a

written regulation which was read into the record, that if any alien was ordered held for special inquiry that fact was indicated by placing the letters "SI" in red ink opposite the alien's name on the manifest; that, if an alien whose name appeared on the manifest presented himself before the immigrant inspector either with no passport or with a passport in a name other than that shown on the manifest, the immigrant inspector would hold the alien for a Board of Special Inquiry and record the fact on the manifest; and that an examination of Government Exhibit 7 indicated that the alien referred to in it as Paolo Maglio had not been held for a Board of Special Inquiry (A. 90-92, 120-121).

(b) *The evidence that petitioner had been convicted of a crime involving moral turpitude prior to entry.* Exhibit 37, an excerpt from the registry of prisoners of the jail of S. Efremo, Naples, for the year 1915, records that Felice De Lucia, son of Antonio De Lucia and Maria Annunziata, born in Naples on November 14, 1897, was arrested on July 17, 1915, charged with attempted homicide and the infliction of serious wounds upon Emilio Perillo, and that he entered the prison on the latter date (A. 118, 227). Exhibit 36 is the record of the conviction of Felice De Lucia, son of Antonio, of Naples, in the Common Assize Court of Naples, on May 18, 1917, for voluntary homicide, "with grave provocation," on the person of Emilio Perillo, committed in Naples on July 17, 1915, for which he

The immigrant inspector whose signature appeared on the manifest was deceased at the time of the hearing (A. 91, 120).

was sentenced to three years' imprisonment, "reduced by 1/6th by reason of the extenuating circumstances" (A. 118, 224-225).*

3. *The order of deportation and opinion of the Special Inquiry Officer.* On January 26, 1959, the Special Inquiry Officer entered an order of deportation (A. 124) and an opinion (A. 107-124) finding petitioner deportable on both of the grounds alleged in the order to show cause. He found, on the basis of the foregoing facts and other evidence reviewed in the opinion, that petitioner "entered the United States in August 1920 by assuming the identity of Paolo Maglio and was not held for hearing before a Board of Special Inquiry"; that it was reasonable to conclude that at the time of his admission he "presented a passport in the name of Paolo Maglio and thereby gained entry into the United States"; that petitioner "is not Paolo Maglio and * * * is, in fact, Felice De Lucia"; that he therefore "did not present a passport showing his true identity", that "the passport presented did not con-

* The defendant was contemporaneously convicted of carrying a gun without a license "under extenuating circumstances" for which he received an additional sentence. The total sentence was imprisonment for two years, six months, and 16 days, plus a fine (A. 224-225).

On June 30, 1924 the same defendant was convicted *in absentia* by the Third Special Assize Court of Naples of another voluntary homicide, the killing of Vincenzo Capasso, for which he was sentenced to 21 years' imprisonment (A. 118, Ex. 38, A. 229-232). The record of the conviction indicates that the warrant of arrest had "remained ineffective * * * to date by reason of [the accused] having absconded" (A. 118-119, 230). The killing of Capasso occurred on June 17, 1920 (A. 118, 229), two months prior to petitioner's entry into this country under an assumed name (see p. 6).

stitute a passport within the provisions of" Executive Order No. 2932 (Appendix, *infra*, pp. 23-24), requiring each entering alien to present a valid passport showing "the identity and nationality of the individual for whose use it was issued"; that petitioner, accordingly, "at the time of his entry did not meet the requirements of Executive Order No. 2932 and he was not entitled to enter the United States under the provisions of the Passport Act of May 22, 1918 [Appendix, *infra*, pp. 22-23], and Executive Order No. 2932" (A. 121). He concluded that petitioner "was excludable at the time of his entry under the laws then existing," and that he was therefore deportable under Section 241(a)(1) and (d) of the Immigration and Nationality Act of 1952 (Appendix, *infra*, p. 21), "regardless of when the entry took place" (A. 121). The officer also concluded that petitioner was deportable on the additional and independent ground that at the time of his entry he was excludable under Section 3 of the Immigration Act of February 5, 1917 (Appendix, *infra*, p. 23) as an alien who had been convicted of a crime involving moral turpitude, *viz.*, voluntary homicide (A. 123).

In reaching these conclusions, the officer stated that "no inferences need be drawn from the [petitioner's] claim of the privilege against self-incrimination nor from his silence, and a finding of deportability is based solely on the evidence of the record" (A. 124).

4. *The appeal to the Board of Immigration Appeals and the judicial review proceedings.* On appeal by petitioner to the Board of Immigration Appeals, the

Board, on August 25, 1959, adopted in substance the findings and conclusions of the Special Inquiry Officer and dismissed the appeal (A. 129-132). The Special Inquiry Officer's discussion of the evidence was incorporated in the Board's opinion by reference (A. 131).

Petitioner thereafter filed in the District Court for the Northern District of Illinois, under 28 U.S.C. 2201 (authorizing declaratory judgments) and Section 10 of the Administrative Procedure Act (5 U.S.C. 1009), a petition for review of the deportation order and for injunctive relief (A. 2-82), alleging among other things that the evidence was insufficient to support the order of deportation and that he was denied a fair hearing. The district court (Perry, D.J.), on February 24, 1961, entered an opinion and order granting a motion by the respondent District Director for summary judgment (A. 246-263; Pet. App. 827-844). The Seventh Circuit affirmed (Pet. App. 845-851).

ARGUMENT

1. Petitioner's contention (Pet. 36-37, 68-85) that he had a "status of nondeportability" at the time of the passage of the Immigration and Nationality Act of 1952, which was preserved by the Act's saving clause (Section 405(a); Appendix, *infra*, pp. 21-22), is answered by *Lehmann* v. *Carson*, 353 U.S. 685, and *Mulcahey* v. *Catalanotte*, 353 U.S. 692, in which like arguments were rejected by this Court. As pointed out in those cases, Section 405(a), by its terms, does not apply to situations "otherwise specifically provided" for in the Act (353 U.S. at 688; 353 U.S. at 694). Here, as in the

Lehmann case, Section 241(a)(1) and (d) of the Act (Appendix, *infra*, p. 21) does "otherwise specifically provide." Subsection (a)(1) makes deportable any alien who "at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry," and subsection (d) makes the provisions of the section applicable to "all aliens belonging to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act." Congress, in short, by these provisions, "was legislating retrospectively, as it may do" (353 U.S. at 690; 353 U.S. at 694), with respect to the deportation of aliens who were excludable by law at the time of entry, regardless of when entry occurred.[7]

2. Petitioner's contention (Pet. 37-49, 86-134) that the rule of *res judicata* foreclosed the government from showing in the deportation proceeding that he entered this country illegally in 1920, because the contrary had been established by the judgment admitting him to citizenship in 1928, is likewise without merit. The

[7] There is no conflict, as asserted by petitioner (Pet. 30, 64), between the decision below and *United States ex rel. Zacharias* v. *Shaughnessy*, 221 F. 2d 578 (C.A. 2). The latter case involved the effect of the saving clause of the 1952 Act on an alien's eligibility for voluntary departure in lieu of deportation. The alien's deportability was not in issue, and no question of the preservation of a "status of nondeportability" was involved. Moreover, the case was decided before *Lehmann* v. *Carson*, 353 U.S. 685, which is squarely dispositive of petitioner's present contention.

short answer to the argument is that the judgment admitting him to citizenship was set aside in the denaturalization proceeding. A vacated judgment manifestly cannot be *res judicata* as to any issue, particularly where, as here, the judgment was revoked for fraud in its procurement. Nor did the issuance by the immigration authorities of a certificate of arrival, incident to the naturalization proceedings, bar later proof, in the deportation proceedings, that the entry had in fact been illegal (cf. Pet. 43, 44, 92, 93, 94, 99). As noted by the district court (A. 261; Pet. App. 842), a certificate of arrival merely reflects data taken from the record of the alien's entry, and in petitioner's case the record of entry—owing to his fraudulent use of a passport issued in another's name—failed to reflect the true facts. "Certainly," as the court observed, "there cannot be attributed to such a certificate a veracity which was lacking in the records on which it was based" (A. 261-262; Pet. App. 842).[*]

3. There is likewise no merit to the claim of petitioner (Pet. 49-50, 138-139) that the Special Inquiry Officer improperly placed upon him the burden of proving that his entry was lawful, rather than requiring the government to show that it was unlawful. It is apparent from the officer's detailed analysis of the government's

[*] See also the court of appeals' observation to the same effect at Pet. App. 851. *Anselmo* v. *Hardin*, 253 F. 2d 165 (C.A. 3), asserted by petitioner to be in conflict with the decision below (Pet. 30, 64-65), involved the effect as *res judicata* of a judgment favorable to an alien arising out of one deportation proceeding on a subsequent attempt to deport the alien on similar grounds. It has no relevance to the present case.

evidence in his opinion (A. 110-123) that he considered the burden of proof of the illegality of entry to rest on the government. At the hearing the Special Inquiry Officer pointed out to petitioner's counsel, correctly, that under the law the burden rests on the alien in a deportation proceeding to show "the time, place, and manner of his entry into the United States" [9] (A. 103-104). But the officer did not interpret this as placing the burden of proof of the legality of entry on petitioner. Counsel for petitioner had argued at the hearing, when his attention was called to the aforesaid provision, that "the proof of the entry" was contained in the exhibits of record and that petitioner proposed to present no further evidence (A. 104). The Special Inquiry Officer, referring in his opinion to counsel's argument, said (A. 124):

> He apparently makes this claim on the basis of the respondent's entry into the United States in August 1920 as Paolo Maglio. However, as previously discussed in detail, *the proof presented by the Government has established* that the respondent's entry on that date was unlawful and that he was excludable because he did not present a valid passport, and for the further reason that he had been convicted of a crime involving moral turpitude. [Emphasis added.]

4. Nor is there substance to the argument (cf. Pet. 50-52, 139-146) that the Special Inquiry Officer, in mak-

[9] Section 291 of the Immigration and Nationality Act of 1952, 8 U.S.C. 1361.

ing his findings, relied upon an adverse inference from petitioner's claim at the hearing of the privilege against self-incrimination (see the Statement, *supra*, pp. 5, 11). The officer, while noting in his opinion that petitioner had invoked his Fifth Amendment privilege in declining to answer the examining officer's questions relating to the circumstances of his entry (A. 108-109, 123), stated that the finding of deportability was "based solely on the evidence of the record," and not on any inferences either from the claim of privilege or from the witness's silence (A. 124). Thus, as observed by the court below (Pet. App. 850-851), "it is apparent from the record that the Officer did not rely upon any such inference [from the claim of privilege]. He recognized the government's counter burden of showing unlawful entry and there is ample evidence that this burden was sustained."

5. There is also no merit to the contention (Pet. 56-62, 171-198) that the administrative proceeding was unfair because the Special Inquiry Officer considered evidence that was not introduced at the hearing. The "evidence" complained of consisted of English translations of the provisions of the Italian Penal Code on which petitioner's 1917 conviction of "voluntary homicide with grave provocation" was based (A. 122, 126-127, 224-225). The hearing officer consulted these provisions in order to verify that the offense was one involving moral turpitude (A. 122), as alleged in the order to show cause (A. 84-85). It was not improper for the officer to examine these provisions without requiring that they be formally received in evidence as

exhibits. The record of the conviction, which was in evidence (A. 224-225), cited the provisions (A. 225). The provisions themselves, therefore, could properly be deemed to be in evidence also by reference. The officer's examination of the provisions involved, at most, a matter of official or administrative notice. Cf. Davis, *Administrative Law* (1951), §§ 150 *et seq.* Petitioner does not contend that the provisions were inaccurately reported by the officer, nor otherwise show that he has been prejudiced. As observed by the court below (Pet. App. 849):

> It appears from the conviction record that the homicide was voluntarily committed and that a sentence was imposed. The term "voluntary" indicates an intent to kill and the fact that a sentence was imposed negates any possibility that the killing was justifiable. So long as the homicide is voluntary and not justifiable no amount of provocation can remove it from the class of crimes involving moral turpitude.

See also *Pillisz* v. *Smith*, 46 F. 2d 769, 770 (C.A. 7); *United States ex rel. Allessio* v. *Day*, 42 F. 2d 217 (C.A. 2); *United States ex rel. Soffano* v. *Doak*, 5 F. Supp. 561, 564-565 (N.D.N.Y.), affirmed, 68 F. 2d 1019 (C.A. 2). Moreover this contention goes only to the second of the two grounds of deportability—petitioner's excludability at the time of entry as a person convicted of a crime involving moral turpitude. It has no relevance to the first, and independent, ground—the entry on a false passport. Thus, in no event could the contention affect the result.

6. Simultaneously with its denial of a petition for rehearing in the present case, the court of appeals denied, without opinion, a motion by petitioner (which had been filed with and printed as part of the petition for rehearing, see Pet. App. 871) for leave to file in the district court a petition under Rule 60(b), F. R. Civ. P. (Appendix, *infra*, pp. 25-26), for relief from the judgment of denaturalization (Pet. App. 865-867, 870-871). The petition for a writ of certiorari contains a section, captioned "Motion Pursuant to Rule 60(b)" (Pet. 62-63, 198-205), relating to that motion. Treating this portion of the petition as, in effect, a petition seeking review of the denial of the motion for leave to file a Rule 60(b) petition in the denaturalization matter, we submit that it clearly presents nothing meriting further review by this Court. The evidence that petitioner procured his naturalization through willful misrepresentations and the concealment of material facts was clear, unequivocal, and convincing (cf. *Schneiderman* v. *United States*, 320 U.S. 118, 135), and no good reason was presented to the court of appeals,[10] and none is now suggested, why a proceeding under Rule 60(b) would be appropriate. Moreover, the motion was untimely.[11]

[10] See motion at Pet. App. 865-867, and government's reply at Pet. App. 868-869.

[11] The motion for leave to file a petition under Rule 60(b) was filed December 18, 1961 (Pet. App. 871), three and one-half years after the affirmance of the judgment of denaturalization by the court of appeals (*United States* v. *De Lucca*, 256 F. 2d 487 (June 18, 1958)), and more than three years after the denial of certiorari by this Court (358 U.S. 836 (October 13, 1958)). Rule 60(b) requires that motions thereunder be filed within a year of the judgment from which relief is sought in the case of some of the specified

7. Petitioner's remaining contentions, all insubstantial, require no more than brief comment:

(*a*) The argument (Pet. 52-54, 146-164) that the Special Inquiry Officer "failed to distinguish between a passport issued to petitioner [in a name which was not his true name] and one issued to another and used by petitioner" (Pet. 52, 146), in addition to being based on conjecture and speculation, is irrelevant, since in any event, as the evidence showed, petitioner gained entry on a passport which did not properly identify him.

(*b*) The assertions that the government suppressed relevant evidence within the control of its officials (Pet. 55-56, 165-171) are gratuitous and without support in the record.

(*c*) There is no conflict, as asserted (Pet. 30-31, 65-67), between the decision below and *United States* v. *Stromberg*, 227 F. 2d 903 (C.A. 5). The *Stromberg* case held that "illegal procurement" of naturalization, a ground of denaturalization under the law existing prior to the Immigration and Nationality Act of 1952, was not continued as such a ground under that Act. The holding thus has no relevance to the present case, involving a deportation proceeding.[12]

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grounds of relief (including one on which petitioner relies), and "within a reasonable time" in all other cases.

[12] It is true that the district court in the present case expressed the view that "illegal procurement as a ground for denaturalization was saved by Section 405 (a) of the Immigration and Nationality Act of 1952" (A. 257; Pet. App. 838). However, the statement was not necessary to the decision, and indeed its pertinence to the case is not clear. The basis of petitioner's denaturalization was not "illegal procurement" but willful misrepresentation and concealment of material facts—grounds specifically made causes for denaturalization by the 1952 Act.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MARCH, 1962.

APPENDIX

STATUTES, REGULATIONS AND RULE INVOLVED

1. The Immigration and Nationality Act of June 27, 1952, §§ 241(a) (1) & (d), 405(a), 66 Stat. 204, 208, 280:

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241 [8 U.S.C. 1251]. (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;

* * * * * *

(d) Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act.

* * * * * *

SAVINGS CLAUSES

SEC. 405 [8 U.S.C. 1101, Note]: (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the

validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes [*sic*], conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *

* * * * * *

2. The Act of May 22, 1918 (the "Passport Act of 1918"), sec. 1, 3, 40 Stat. 559:

[Sec. 1.] When the United States is at war, if the President shall find that the public safety requires that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—

(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;

* * * * * *

Sec. 3. Any person who shall willfully violate any of the provisions of this Act, or of any order or proclamation of the President promulgated, or of any permit, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, imprisoned for not more than twenty years, or both; * * *.

3. The Immigration Act of February 5, 1917, § 3, 39 Stat. 875 (8 U.S.C. (1926 ed.) 136):

Sec. 3. The following classes of aliens shall be excluded from admission into the United States: * * persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; * * *.

4. Executive Order No. 2932 of August 8, 1918[1]:

RULES AND REGULATIONS GOVERNING THE ISSUANCE OF PERMITS TO ENTER AND LEAVE THE UNITED STATES

Supplemental to the Presidential proclamation of August 8, 1918 [40 Stat. (Part 2) 1829], and by virtue of the authority set forth therein [the Act of May 22, 1918, *supra*, pp. 22-23], I hereby prescribe the following rules and regulations governing departure from and entry into the United States.

[1] See *Laws Applicable to Immigration and Nationality* (GPO, 1953) p. 1050 ff.

TITLE I.—DEFINITIONS

SEC. 5. The term "passport" as used herein includes any document in the nature of a passport issued by the United States or by a foreign government, which shows the identity and nationality of the individual for whose use it was issued and bears his signed and certified photograph.

* * * * * * *

TITLE 7.—PERMITS TO ENTER

SEC. 31. Subject to the exceptions and limitations hereinbefore set forth no alien shall be allowed to enter the United States unless he bears a passport duly visaed in accordance with the terms of the Joint Order of the Department of State and the Department of Labor issued July 26, 1917. Said Joint Order and the amendments thereto and instructions issued thereunder are hereby confirmed and made part hereof by reference, so far as their provisions are not inconsistent with these rules and regulations or with the President's Proclamation of August 8, 1918. * * *

* * * * * * *

5. The Joint Order of the Department of State and the Department of Labor issued July 26, 1917 [2]:

After due publication of this order in foreign countries every person leaving a foreign country for the United States (except persons starting from Canada) with the purpose of entering, pass-

[2] See *Laws Applicable to Immigration and Nationality* (GPO, 1953), p. 1042 *ff.*

ing through or touching at a port of the United States shall be required, before he is permitted to enter the United States, to present a valid passport, or other official document in the nature of a passport, satisfactorily establishing his identity and nationality, with a signed and certified photograph of the bearer attached. * * *

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6. Rule 60(b) of the Federal Rules of Civil Procedure:

RELIEF FROM JUDGMENT OR ORDER

* * * * * * *

(b) *Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.* On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the

judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

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